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Attorneys for Individual and Representative
Plaintiffs Clarke and Rebecca Wixon and
Norman and Barbara Wixon

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Clarke and Rebecca Wixon and Norman
and Barbara Wixon, derivatively and on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

Wyndham Resort Development Corp. (f/k/a
Trendwest Resorts, Inc.), Gene Hensley, David
Herrick, John Henley, Peggy Fry and John
McConnell, and nominally, WorldMark, The
Club,

Defendants.

Case No. C 07 2361 JSW (BZ)

**DECLARATION OF JONATHAN K. LEVINE
IN SUPPORT OF PLAINTIFFS' MOTION TO
ENFORCE PARTIES' CLASS
CERTIFICATION DISCOVERY
STIPULATION AND TO STRIKE
EVIDENCE PURSUANT TO FED. RULE
CIV. P. 37 AND COURT'S INHERENT
AUTHORITY**

CLASS AND DERIVATIVE ACTION

Date: June 26, 2009

Time: 9:00 a.m.

Courtroom: Hon. Jeffrey S. White

FILED IN UNREDACTED FORM

PURSUANT TO COURT ORDER

1 I, Jonathan K. Levine, declare as follows:

2 1. I am a member in good standing of the State Bar of California and a partner with the
3 law firm of Girard Gibbs LLP, counsel of record for plaintiffs Clarke and Rebecca Wixon and Norman
4 and Barbara Wixon ("Plaintiffs"). I make this declaration based on my personal knowledge in support
5 of Plaintiffs' Motion To Enforce Parties' Class Certification Discovery Stipulation And To Strike
6 Evidence Pursuant To Fed. Rule Civ. P. 37 And Court's Inherent Authority. If called to testify to the
7 contents thereof, I could and would competently do so.

8 2. On May 11, 2009, in accordance with Local Rule 37-3, I conferred by telephone with A.
9 William Loeffler, attorney for Defendant Wyndham Resort Development Corporation ("Wyndham") to
10 discuss Plaintiffs' motion for enforcement. On May 12, 2009, I had further e-mail communications
11 with Mr. Loeffler regarding Plaintiffs' motion. Mr. Loeffler and I were unable to resolve the parties'
12 dispute during any of these exchanges.

13 3. Attached hereto as **Exhibit A** is a true and correct copy of the Fourth Discovery Order
14 issued by the Hon. Bernard Zimmerman in this action on April 30, 2009 (Dkt. No. 263).

15 4. Attached hereto as **Exhibit B** is a true and correct copy of my letter dated January 15,
16 2009 to Judge Zimmerman describing the parties' discovery stipulation. The referenced document was
17 submitted to the Court on January 15, 2009. Thereafter, on February 2 and 17, 2009, Wyndham's
18 counsel produced to my office over 257,000 documents in electronic form, including approximately
19 15,000 separate Excel spreadsheet (.xls) files. The documents in the two productions bear the Bates
20 numbers WRDCESI-00000001-0000 to WRDCESI-00164616-0001 and WRDCESI-00164617-0000
21 to WRDCESI-00189989-0000.

22 5. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of William
23 M. Droze In Support Of Defendant Wyndham Resort Development Corporation's Motion To Compel
24 Discovery that was filed in this action on March 26, 2009 (Dkt. No. 230-2).

25 6. Attached hereto as **Exhibit D** is a true and correct copy of the transcript of the
26 discovery proceeding held before Judge Zimmerman by telephone on April 30, 2009.

27 7. Attached hereto as **Exhibit E** is a true and correct copy of the December 31, 2008 letter
28 of Plaintiffs' attorney, Elizabeth C. Pritzker, to Judge Zimmerman seeking "an order requiring

Wyndham to produce all non-privileged documents (in paper and electronic form) responsive to Plaintiffs' First and Second Requests for Production of Documents, by a date certain." The referenced document was filed with the Court on December 31, 2008 (Dkt. No. 198).

8. Attached hereto as **Exhibit F** is a true and correct copy of the transcript of the discovery proceeding held before the Judge Zimmerman by telephone on January 10, 2009.

9. Attached hereto as **Exhibit G** is a true and correct copy of the Second Discovery Order issued by Judge Zimmerman in this action on January 12, 2009 (Dkt. No. 202).

10. Attached hereto as **Exhibit H** is a true and correct copy of my letter dated January 12, 2009 to Wyndham's attorneys, William M. Droze and Mr. Loeffler, and the attorneys for the Director Defendants, Judith H. Ramseyer and Matthew G. Ball, describing the terms of the discovery stipulation between Plaintiffs and Wyndham. The referenced document was sent to Defendants' counsel on January 12, 2009.

11. Attached hereto as **Exhibit I** is a true and correct copy of the letter dated January 13, 2009 from Wyndham's attorney, William M. Droze, to me in response to my January 12, 2009 letter.

12. Attached hereto as **Exhibit J** is a true and correct copy of the April 28, 2009 letter from Ms. Pritzker to Judge Zimmerman requesting entry of an interim protective order and expedited hearing. The referenced document was filed in this action on April 28, 2009 (Dkt. No. 260).

13. Attached hereto as **Exhibit K** is a true and correct copy of the April 29, 2009 letter response by Mr. Droze to Ms. Pritzker's April 28, 2009 letter. The referenced document is listed as having been filed in this action on April 29, 2009 (Dkt. No. 262).

14. Attached hereto as **Exhibit L** is a true and correct copy of the letter dated May 5, 2009 from Wyndham's attorney, Vincent Bushnell, that accompanied Wyndham's May 6, 2009 production of documents. The documents contained in that production, which was made partially in paper form and partially on CD-ROM, bear the Bates numbers WRDC0323282-0324231. The documents contained in that production had not been previously been produced to Plaintiffs or their attorneys. Likewise, the documents cited as sources for Exhibits 1-17 in the May 5, 2009 Expert Report Pertaining to Class Certification by Wyndham's expert, Dr. Michael C. Keeley, had not been previously been produced to Plaintiffs or their attorneys.

6 17. Attached hereto as **Exhibit O** is a true and correct copy of Wyndham's redaction log.
7 The referenced document was provided by Wyndham's attorneys to my office on May 8, 2009.

12 _____ /s/ Jonathan K. Levine
 13 Jonathan K. Levine

CERTIFICATE OF SERVICE

I, Jonathan K. Levine, hereby certify that on May 22, 2009, I filed the following document(s):

**1. DECLARATION OF JONATHAN K. LEVINE IN SUPPORT OF
PLAINTIFFS' MOTION TO ENFORCE PARTIES' CLASS
CERTIFICATION DISCOVERY STIPULATION AND TO STRIKE
EVIDENCE PURSUANT TO FED. RULE CIV. P. 37 AND COURT'S
INHERENT AUTHORITY**

By ECF (Electronic Case Filing): I e-filed the above-detailed document utilizing the United States District Court, Northern District of California's mandated ECF service on May 22, 2009. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, CA on May 22, 2009.

/s/ Jonathan K. Levine